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31 **UNITED STATES DISTRICT COURT**
 32 **NORTHERN DISTRICT OF CALIFORNIA**

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 34 SANTIAGO, and SUSAN LYNN
 35 HARVEY, individually and on behalf
 36 of all others similarly situated,

37 Plaintiffs,
 38 v.
 39 GOOGLE LLC,
 40 Defendant.

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70 Case No.: 3:20-cv-04688-RS

71 **PLAINTIFFS' OPPOSITION TO**
 72 **GOOGLE'S MOTION TO DECERTIFY**
 73 **OR MODIFY THE CLASS (DKT. 698)**

74 Judge: Hon. Richard Seeborg
 75 Trial Date: August 18, 2025

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1 **I. INTRODUCTION**

2 This case has always been about Google’s uniform conduct and disclosures for an
 3 “on/off” button. As Google put it in a pretrial discovery letter: “the central questions in the case
 4 are [1] what Google represented to users and [2] the actual technical functioning of the accused
 5 technology.” Dkt. 361-19 at 3. Plaintiffs agree. This Court certified the classes because of the
 6 predominance of these and other common questions, the superiority of addressing these claims
 7 on a classwide basis, and the appropriateness of addressing injunctive relief classwide.

8 As this Court has previously held, “a motion for decertification will generally only
 9 succeed where there has been some change in the law or facts that justifies reversing the initial
 10 certification decision.” *Utne v. Home Depot U.S.A., Inc.*, 2022 WL 1443338, at *5 (N.D. Cal.
 11 May 6, 2022) (Seeborg, C.J.). Neither is present here. This Court issued two prior certification
 12 rulings. Dkt. 352, 384. Since those rulings, there has been no change in the law or the facts that
 13 would warrant decertification. After certification, Google sought summary judgment—on a
 14 classwide basis, based on common proof—and the parties then tried these claims based on
 15 common proof.

16 Plaintiffs presented the jury with classwide evidence that Plaintiffs had summarized for
 17 this Court in their pre-trial class certification motion, and in opposition to Google’s motion for
 18 summary judgment. Classwide evidence proved that, throughout the class period, (1) Google
 19 represented to *all* class members that they needed to have (s)WAA “on” for Google to collect
 20 and save their third-party app activity and (2) Google nonetheless designed and used the accused
 21 technology (its SDKs) to collect and save third-party app activity from *all* class members’ devices
 22 while class members had (s)WAA “off.” Based on that classwide evidence, the jury found as
 23 fact that Google invaded the privacy rights of *all* class members.

24 Google now seeks to undo the jury’s verdict by arguing that there were “*no* common
 25 issues” at trial and “*no* common questions that can be resolved by class-wide proof.” Mot. at 4,
 26 11 (emphases added). In advancing this astonishing claim, Google repeats arguments that this
 27 Court already rejected prior to trial. Now that the jury has returned its verdict, Google’s

1 arguments are even weaker because of the deference owed to the jury’s factual finding that
 2 Google harmed all class members and invaded their privacy rights. This Court should again
 3 reject these arguments and deny Google’s decertification motion.

4 **II. LEGAL STANDARD**

5 Rule 23(b)(3) asks whether “common” questions, “*capable* of class-wide resolution,”
 6 “predominate” over individual inquiries. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee*
 7 *Foods LLC*, 31 F.4th 651, 667–68 (9th Cir. 2022) (en banc) (emphasis added). The question
 8 under Rule 23(b)(3) is not whether the classwide evidence gives a sufficiently persuasive
 9 common answer; the question is only whether the classwide evidence is “*capable*” of giving a
 10 common answer. *Id.* Disputes over the “persuasiveness” of classwide evidence are “for the
 11 jury,” not for the district court in deciding certification. *Id.* at 678.

12 This jury’s factual finding—that Google harmed *all* class members and invaded their
 13 privacy rights—is entitled to deference. In *Tyson Foods v. Bouaphakeo*, the Supreme Court held
 14 that when asked to decertify a class after a trial, courts should apply the Rule 50(b)/summary
 15 judgment standard and treat the jury’s factual findings as binding unless “no reasonable juror”
 16 could have made them. 577 U.S. 442, 459 (2016) (affirming denial of post-trial decertification
 17 motion); *see Olean*, 31 F.4th at 667 n.11 (clarifying that *Tyson Foods* applies to all class actions
 18 and is not limited to “wage and hour” cases).

19 **III. ARGUMENT**

20 **A. The Jury’s Verdict Establishes that Plaintiffs’ Classwide Evidence was “Capable”
 21 of Proving that Google Invaded Every Class Member’s Privacy**

22 Google’s motion does not even try to grapple with the jury’s factual findings, which are
 23 now binding. This jury heard ample classwide evidence and in reliance on that classwide
 24 evidence this jury answered common questions for the entire classes. On its verdict form, the
 25 jury found as fact that “Plaintiffs” (a term defined to mean *all class members*¹) had

26 ¹ In its jury instructions, this Court defined the term “Plaintiffs” to mean “[a]ll of these people”
 27 in the “class.” Dkt. 666 at 13 (Instruction No. 12). The Court then defined the two “classes” for
 the jury, using the same definitions that this Court had previously certified. *See id.*

1 “prove[d] . . . all the elements of” their “invasion of privacy” and “intrusion upon seclusion”
 2 claims. Dkt. 670 (verdict form). Those “elements” included: that all class members (“Plaintiffs”)
 3 had an objectively reasonable expectation of privacy; that Google “intentionally intruded upon”
 4 all class members’ “objectively reasonable expectation of privacy by its conduct”; that Google’s
 5 conduct was highly offensive; that all class members “sustained injury, damage, loss, or harm”;
 6 and that Google’s “conduct was a substantial factor in causing” that classwide “harm.” Dkt. 666
 7 at 19 (Instruction No. 18) (elements of “invasion of privacy”); *id.* at 21 (Instruction No. 20)
 8 (elements of “intrusion upon seclusion”).

9 Google’s motion is, in essence, an attempt to persuade this Court that the classwide
 10 evidence the jury heard was not actually sufficient to support the jury’s classwide verdict. For
 11 example, much of Google’s motion repeats its theme (which Google emphasized throughout the
 12 trial and at closing argument) that the evidence at trial did not prove that Google collected certain
 13 indisputably identifying information (name, email address, and phone number) from every class
 14 member. But “information need not be personally identifying to be private.” *In re Google*
 15 *Referrer Header Priv. Litig.*, 465 F. Supp. 3d 999, 1009–10 (N.D. Cal. 2020); Dkt. 445 (Order
 16 Denying MSJ) at 10 (quoting same). And Google’s motion ignores all of the classwide evidence
 17 demonstrating the kinds of data that Google actually *did* collect from every class member. *See*
 18 *infra*, at n.3 & accompanying text (summarizing this evidence). Google is arguing (implicitly)
 19 that all this classwide evidence, including Google’s uniform disclosures and the app activity data
 20 Google did collect uniformly using the SDKs, was not sufficiently persuasive to find Google
 21 liable. The *persuasiveness* of classwide evidence, however, is a question for the jury. *Olean*, 31
 22 F.4th at 678 (whether the classwide evidence is “persuasive” is a jury question).

23 The threshold for class certification under Rule 23(b)(3) is whether classwide evidence is
 24 “capable” of resolution on a classwide basis, including for example proving that all class
 25 members were harmed by the defendant’s conduct. *Olean*, 31 F.4th at 684. Here, the jury’s
 26 verdict establishes conclusively that the classwide evidence in this case was more than “capable”
 27 of doing exactly that.

1 The Supreme Court’s decision in *Tyson Foods* affirming the denial of a post-trial
 2 decertification motion demonstrates the importance of deference to factfinding by juries. 577
 3 U.S. at 453–54. The jury found that Tyson violated the Fair Labor Standards Act by failing to
 4 pay the class members (Tyson’s employees) for the time it took to put on protective gear at the
 5 start of their shifts and then to take that gear off when their shifts were done. *Id.* Tyson did not
 6 keep records of the time that class members actually spent “donning” and “doffing” their gear.
 7 *Id.* Without records available, the plaintiffs in *Tyson* proved the amount of time using the
 8 testimony of an expert, who studied a representative sample of videos of 744 class members
 9 donning and doffing their gear. *Id.* at 450. The “central dispute” at trial was whether the jury
 10 was permitted to infer that the expert’s 744 observations were representative, that is, that whether
 11 “each employee donned and doffed for the same average time observed in [the expert’s] sample.”
 12 *Id.* at 454. After the jury’s verdict, the defendant re-raised all the same factual disputes, over the
 13 representativeness of the expert’s sample, in its post-trial decertification motion. *Id.*

14 The Supreme Court affirmed the district court’s denial of the post-trial decertification
 15 motion because it was *for the jury* to decide whether the expert’s sample was sufficiently
 16 probative. Invoking the standard that applies at summary judgment (or, post-trial, under Rule
 17 50(b)), the Supreme Court held that “[t]he District Court could have denied class certification on
 18 this ground”—i.e., the non-representative nature of the expert’s sample—“only if it concluded
 19 that no reasonable juror could have believed that the employees spent roughly equal time donning
 20 and doffing.” *Id.* at 459. In this case, Google has not even tried to demonstrate that no reasonable
 21 jury could have relied on the classwide evidence, presented at this trial, to find Google liable for
 22 violating all class members’ privacy rights. *See Wallace v. City of San Diego*, 479 F.3d 616, 624,
 23 630 (9th Cir. 2007) (reversing district court’s JMOL under Rule 50(b) because the evidentiary
 24 record at trial “does not compel a conclusion contrary to that of the jury”).

25 Another decision denying a post-trial motion to decertify is *Wakefield v. ViSalus, Inc.*,
 26 2019 WL 3945243 (D. Or. Aug. 21, 2019) (Simon, J.). In *Wakefield*, the jury found the defendant
 27 liable for sending 1.8 million telemarketing phone calls to the class members in violation of the

1 Telephone Consumer Protection Act. The defendant's post-trial decertification motion identified
 2 numerous individualized issues that, according to the defendant, should have been relevant to the
 3 jury's liability verdict. Like Google's motion here, the defendant's motion in *Wakefield*
 4 "involved factual questions both relevant to the (de)certification motion and an element of the
 5 class's merits claim." *Id.* Judge Simon reiterated that

6 "when a district court considers decertification (or modification)
 7 of a class after a jury verdict, the district court must defer to any
 8 factual findings the jury necessarily made unless those findings
 9 were 'seriously erroneous,' a 'miscarriage of justice,' or
 10 'egregious,'" thus applying the same standard used in a motion for
 11 a new trial [under Rule 59] based on the weight of the evidence.

12 *Id.* (quoting *Mazzei v. Money Store*, 829 F.3d 260, 269 (2d Cir. 2016)). Applying that Rule 59
 13 standard, Judge Simon denied the post-trial motion to decertify by deferring to the jury's factual
 14 findings and to the classwide "reasonable inferences" that the jury was permitted to make based
 15 on the evidence presented at trial. *Id.* at *6-*7 (deferring to the jury's "reasonable inference"
 16 that common evidence proved that defendant had called class members' home or cell phones,
 17 rather than their business phones); *id.* at *7 (deferring to jury's reasonable "inference" that the
 18 sample of phone messages played at trial was "representative"). The Ninth Circuit affirmed in
 19 an opinion that did not discuss the deference owed to the jury's factfinding. 51 F.4th 1109 (9th
 20 Cir. 2022).

21 The *Tyson Foods* decision holds that a jury's factual findings are binding, for purposes
 22 of a post-trial decertification motion, unless the defendant demonstrates that "no reasonable
 23 juror" could have made those findings (the Rule 50(b)/summary judgment standard). *Wakefield*
 24 and the Second Circuit's decision in *Mazzei* hold that a jury's factual findings are now binding
 25 unless the Rule 59 "new trial" standard is met. This Court should follow *Tyson Foods*, which is
 26 binding Supreme Court precedent that the Second Circuit overlooked when deciding *Mazzei* just
 27 three months later. But regardless of which standard applies, Google has not met it.

1 In short: the jury’s verdict establishes beyond question that the classwide evidence in this
 2 case was at the very least “capable” of proving each of the elements of the privacy torts. *Olean*,
 3 31 F.4th at 684.

4 **B. The Rule 23(b)(3) Classes Were Properly Certified**

5 The jury’s verdict, and the classwide evidence admitted at trial, together confirm the
 6 appropriateness of the Court’s Rule 23(b)(3) certification. As the Court ruled before, the two
 7 privacy claims entail similar elements, asking whether “(1) there exists a reasonable expectation
 8 of privacy, and (2) the intrusion was highly offensive.” Dkt. 352 (Class Certification Order) at
 9 8 (quoting *In re Facebook, Inc. Internet Tracking Litigation*, 956 F.3d 589, 601 (9th Cir. 2020)).
 10 These two questions were readily subject to classwide proof in part because (1) the “question of
 11 whether a reasonable expectation of privacy exists is an objective one” (*id.*), and (2) the “central
 12 inquiry” on offensiveness is “whether a *reasonable person* would find the intrusion by Google
 13 highly offensive” (*id.* at 10 (emphasis in original)). Even with its third bite at the apple, Google
 14 neither identifies any legal change that could support decertification nor points to any change in
 15 facts that warrants decertification. Ample common evidence at trial supports the jury’s verdict
 16 on each element of Plaintiffs’ privacy claims.

17 **1. Rule 23(a)(2)’s Commonality Requirement Remains Satisfied**

18 Google’s Rule 23(a)(2) commonality argument is not credible. Google concedes that
 19 Plaintiffs “need only identify *one* common question” to meet the Rule 23(a)(2) commonality
 20 requirement. Mot. at 3 (emphasis added); *see Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d
 21 1125, 1133 (9th Cir. 2016) (alterations adopted) (“[E]ven a single common question will do.”).
 22 Yet Google now asserts that there are “no common issues.” Mot. at 4, 11. Taking Google’s
 23 argument to its logical end, if an “on/off” privacy switch that was set to “off” for every class
 24 member is incapable of class treatment for want of commonality, Google posits a world where
 25 privacy class actions are incapable of classwide adjudication. That cannot be right. And here
 26 the jury found just the opposite in its now-binding verdict, in which the jury found Google liable
 27 *classwide* for each element of the privacy torts. Even if there were a basis for this Court to

1 second-guess the jury’s finding of classwide liability (and Google supplies none), this Court
 2 should not do so because the record at trial demonstrated that there are many common questions.

3 This case has always been replete with common questions. As Google put it, in a
 4 discovery letter sent to Plaintiffs: “the central questions in the case are [1] what Google
 5 represented to users and [2] the actual technical functioning of the accused technology.” Dkt.
 6 361-19 (Exhibit 17 to Plaintiffs’ class certification motion) at 3. After certification, Google
 7 moved for summary judgment based on common proof, asking the Court to resolve those
 8 common questions in Google’s favor. Dkt. 383. At trial, Google also presented the jury with
 9 common proof and sought a classwide verdict in Google’s favor.

10 The Court’s prior certification order recognized many common questions that Plaintiffs
 11 proposed for classwide resolution. For example, the Court highlighted how Google made a
 12 “common representation to users” about what happens when (s)WAA is off. Dkt. 352 at 10; *see*
 13 *also* Dkt. 384 (order clarifying class definitions) at 5 (noting that “Google’s representations” are
 14 “common to the class”). As another example, the Court ruled that whether class members “had
 15 an objective, reasonable expectation of privacy based on Google’s representations about the
 16 sWAA button” is “a question capable of resolution class-wide.” Dkt. 352 at 10. These are just
 17 some of many examples, in a trial which turned on Google’s classwide refusal to honor its own
 18 “on/off” privacy switch.

19 The classwide proof at trial was more than sufficient to enable the jury to answer these
 20 common questions for all class members throughout the class period. For example, the parties
 21 (both Plaintiffs and Google) presented the jury with uniform disclosures that applied to all class
 22 members throughout the class period; those disclosures did not change based on a setting,
 23 location, or any other individualized issue. Indeed, Plaintiffs and Google even *stipulated* to an
 24 agreed-to set of *uniform* Google disclosures that were admitted into evidence. Tr. 1840:7–
 25 1841:17.² These uniform disclosures promised users they could “control what we collect” and

27 ² All references to “Tr.” are to the trial transcript. The portions of the trial transcript referenced
 in this brief are attached as Exhibit 1 to the concurrently filed Declaration of Mark Mao.

1 invited users to exercise that control by using Google’s “privacy controls” including (s)WAA.
 2 PX-62 (Privacy Policy) at 1, 8. Google likewise told users that “Web & App Activity must be
 3 on” for Google to “save information like” “your activity on [] apps that use Google services.”
 4 PX-113 (WAA Help Page). That common proof enabled the jury to answer a common question:
 5 did class members have an objectively reasonable expectation of privacy in their app activity
 6 data when (s)WAA was turned off?

7 In addition to the common, classwide disclosures, Plaintiffs also presented the jury with
 8 internal Google documents and testimony by fact and expert witnesses that demonstrated
 9 Plaintiffs’ objectively reasonable expectation of privacy. Plaintiffs introduced a Google-
 10 commissioned survey about (s)WAA in which “[a]ll participants expected turning off toggle to
 11 stop their activity from being saved.” PX-2 at 20. Plaintiffs also introduced Google employees’
 12 descriptions of how a reasonable user would understand what it means to save data outside of a
 13 person’s “Google Account.” *See, e.g.*, PX-3 at 1 (“What you are stating is WAA (or any of the
 14 other controls) does not actually control what is stored by Google, but simply what the user has
 15 access to. This is really bad.... In this case, the user has a false sense of security that their data
 16 is not being stored at Google, when in fact it is.”).

17 Relevant to the offensiveness of Google’s conduct, common evidence proved that Google
 18 intentionally hid its misconduct from users. *See, e.g.*, PX-4 at 2 (“In English, we’re intentionally
 19 vague because the technical details are complex and it could sound alarming to users (for
 20 something that we feel shouldn’t sound alarming”); PX-42 at 1 (conceding that Google’s “goal”
 21 is “giving users a *sense* of the system as working to their benefit” but “without actually improving
 22 any of the underlying condition”); Tr. 1066:11–14 (Heft-Luthy) (“Q: Well, isn’t it the case, sir,
 23 that at this time Google was trying to convince its users that they had control over the data that
 24 Google collected and used? A: I would say that would be fair.”). Plaintiffs offered many exhibits
 25 in which Google employees uniformly criticized Google’s disclosures and its collection of
 26 (s)WAA-off data. *See, e.g.*, PX-3 at 2 (“We need to change the description to indicate that even
 27 with the control off, Google retains this data and uses it for X purposes”).

1 And Google’s “uniform conduct” (Dkt. 352 at 11) includes its failure to provide any
 2 option for users to avoid having their app activity data collected by Google. The Founder of
 3 Google’s Privacy and Data Protection Office, Eric Miraglia, could not identify “any switch at the
 4 device or account level where a user would have confidence in not having activity tracked in any
 5 app.” Ex. 2 (PX-388, deposition designation clip report) at 128:21–129:03. Relatedly, users
 6 have no option to delete their (s)WAA-off data—another fact confirmed by testimony from
 7 Google’s employees. Tr. 311:22–312:5, 313:16–17 (Monsees); Tr. 1214:3–8, 1253:17–25
 8 (Ganem). These are just some of the many common questions that the jury answered based on
 9 classwide evidence.

10 **2. Rule 23(b)(3)’s Predominance Requirement Remains Satisfied**

11 Google’s predominance argument also fails. For these privacy claims, common questions
 12 predominated, both at class certification and at trial. This Court should reject Google’s after-trial
 13 effort to recast this case as one where individual issues somehow predominate and classwide
 14 treatment is no longer a superior method to resolving these claims.

15 **a) Reasonable Expectation of Privacy**

16 Google barely addresses this element, relying instead on a footnote to “preserve” the
 17 “prior arguments” Google raised at class certification. Mot. at 4 n.1. But Google cannot preserve
 18 anything in a footnote. “‘Arguments raised only in footnotes . . . are generally deemed waived’
 19 and need not be considered.” *Holley v. Gilead Scis., Inc.*, 379 F. Supp. 3d 809, 834 (N.D. Cal.
 20 2019) (quoting *Estate of Saunders v. Comm’r*, 745 F.3d 953, 962 n.8 (9th Cir. 2014)). Having
 21 failed to make these arguments in its opening brief, Google cannot do so for the first time in its
 22 reply brief. *See id.* These “prior arguments” have therefore been waived.

23 In any event, Google’s arguments that the “reasonable expectation of privacy” element
 24 requires individualized inquiry also fail on the merits—for all the reasons Plaintiffs gave in their
 25 pre-trial briefing in support of class certification. *See* Dkt. 333 (Plaintiffs’ class certification
 26 reply) at 4. As this Court recognized before, this is an *objective* standard that does not require
 27 *individualized* consideration of each class members’ feelings about privacy. Dkt. 352 at 8;

1 *accord Ortiz v. Los Angeles Police Relief Ass'n*, 98 Cal. App. 4th 1288, 1305–06 (2002) (“A
 2 reasonable expectation of privacy is an objective entitlement founded on broadly based and
 3 widely accepted community norms” (internal quotation marks and citation omitted)).

4 Nothing has changed that warrants decertification. The Court’s jury instructions were
 5 consistent with and confirm this objective standard. To determine whether class members had
 6 “an objectively reasonable expectation of privacy,” the jury was instructed to “consider, among
 7 other factors . . . the customs, practices, and physical or digital settings surrounding Google’s
 8 conduct,” “the extent to which other persons had access to the data at issue” and “the means by
 9 which the intrusion, if any, occurred.” Dkt. 666 at 19–20 (Instructions Nos. 18 & 19). Google
 10 does not seriously think otherwise—in fact, Google *agreed* to this objective standard when it
 11 proposed a version of this instruction that was substantially similar to the instruction this Court
 12 gave. *See* Dkt. 595 at 58 (Google’s Proposed Instruction No. 36).

13 The jury’s verdict on this element is especially worthy of deference, since reasonable
 14 expectations of privacy are based on, among other considerations, “community norms of
 15 privacy.” *Opperman v. Path, Inc.*, 205 F. Supp. 3d 1064, 1079 (N.D. Cal. 2016) (internal
 16 quotation marks and citation omitted). Those community norms are comprised of “customs and
 17 habits [that] are very much in flux” as technology rapidly evolves. *Id.* The jury’s “function” is
 18 to “reflect[]” and then apply “the community’s standards as they relate to the privacy of
 19 information” in this technological era. *Id.* at 1080. “A judge should be cautious before
 20 substituting his or her judgment for that of the community.” *Id.*

21 Ample classwide evidence at trial supported the jury’s finding that class members had an
 22 objectively reasonable expectation of privacy in their (s)WAA-off data. At issue is a binary
 23 “on/off” switch. And Google through its “privacy disclosures” “set an expectation that”
 24 (s)WAA-off user data “would not be collected, but then collected it anyway.” *Facebook*
 25 *Tracking*, 956 F. 3d at 602. Google’s own researcher predicted that users would “believe that
 26 turning off WAA will result in no data being collected from their activity.” PX-9 at 6. The
 27 concerns raised by Google’s employees bolster the reasonableness of class members’ expectation

1 of privacy. *See, e.g.*, PX-3, PX-6. This core dispute regarding the existence of a reasonable
 2 expectation of privacy was decided by the jury based on common proof.

3 **b) Highly Offensive Conduct**

4 Consistent with the Court’s certification ruling, the classwide evidence at trial also
 5 confirmed that the question of whether Google’s conduct was highly offensive was “capable of
 6 resolution class-wide” where the “relevant inquiries” were “primarily Google’s uniform
 7 disclosures and users’ uniform conduct.” Dkt. 352 at 11. The Court instructed the jury that
 8 highly offensive conduct means “a shocking or outrageous breach of social norms regarding
 9 online data.” Dkt. 666 at 19, 21 (Instructions Nos. 18, 20). As this Court ruled before, the
 10 offensiveness inquiry is an objective one that asks whether a “reasonable person” would find the
 11 conduct highly offensive. Dkt. 352 at 10; *see also* Dkt. 445 at 10 (denying summary judgment
 12 based on the same objective standard).

13 At trial, the jury answered this common question with classwide evidence proving that
 14 Google’s conduct was highly offensive. Google made uniform representations that users were
 15 in control of their data. Classwide evidence proved that class members’ (s)WAA settings were
 16 all set to “off.” And classwide evidence also demonstrated the kinds of data that Google’s SDKs
 17 transmitted to Google by default for every single app in which those SDKs were found: the
 18 device’s location, certain personal identifiers, and other “default” data, including the particular
 19 screen within apps that users chose to view.³ The jury also saw internal Google documents
 20 proving that Google persisted in collecting and exploiting this valuable data notwithstanding
 21 employee concerns that users were being misled. *See, e.g.*, PX-3 at 2 (“The WAA and other
 22 controls imply we don’t log the data, but obviously we do. We need to change the description to
 23 indicate that even with the control off, Google retains this data and uses it for X purposes.”); Tr.
 24 1463:13–1464:13 (Ruemmler agreeing that Google makes money “when users turn off their
 25 WAA button” while discussing PX-3); PX-6 at 49 (“Often the way for these teams to make

26
 27 ³ *See* Tr. 596:6–599:4, 600:6–601:6, 687:3–17; 704:6–17, 734:24–735:4, 738:25–739:4
 (Hochman); Tr. 1206:13–20; 1207:17–22 (Ganem); Tr. 1699:1–23, 1733:20–25 (Black).

1 money is to use data in some dubious way”). Google provided no way for any class member to
 2 opt out of Google’s inescapable tracking web, which spans “97 percent” of the “top” Android
 3 apps and “54 percent” of the “top” iOS apps. PX-388 (deposition designation clip report) at
 4 128:21–129:03 (Miraglia); Tr. 586:4–10 (Hochman). Nor did Google provide any option for
 5 class members to delete the data Google had already collected. Tr. 311:22–312:5 (Monsees); Tr.
 6 1214:3–8, 1253:17–25 (Ganem).

7 Here again, the jury’s classwide finding of offensiveness is especially worthy of
 8 deference. That is because “[t]he American jury has historically served the function of the
 9 community’s conscience. If the jury in a tort case believes that the defendant’s conduct does not
 10 meet the community’s standards of reasonableness, then its verdict is a way of articulating those
 11 standards.” *M.H. v. Cnty. of Alameda*, 2015 WL 894758, at *14 (N.D. Cal. Jan. 2, 2015).

12 Google cites several cases for the proposition that “[t]he type of data that is collected is *a*
 13 factor” that courts or the jury should consider in assessing offensiveness. Mot. at 5 (emphasis
 14 added). Plaintiffs agree with the uncontroversial proposition that the type of data at issue is *a*
 15 factor. The classwide evidence proved at trial that Google collected from all class members,
 16 among other default data, certain identifiers that Google’s own Privacy Policy deemed “personal
 17 information.” *Supra*, at n.3 & accompanying text; *infra*, § III.B.3.a.

18 But Google appears to go much further than the cases would support and to argue that the
 19 specific data collected from each class member is the *only* thing that matters in assessing the
 20 offensiveness of Google’s conduct. *See* Mot. at 5–9. That assertion is contradicted by binding
 21 circuit precedent. *See Facebook Tracking*, 956 F.3d at 606. Indeed, Google’s own proposed
 22 alternative jury instruction would have directed the jury to consider many other factors, besides
 23 the specific types of data collected, when assessing the offensiveness of Google’s conduct. Dkt.
 24 595 at 63 (Google’s Proposed Instruction No. 37). And the instructions that this Court actually
 25 gave to the jury did not require the jury to make any specific findings about the types of
 26 information collected. Dkt. 666 at 19, 21 (Instructions Nos. 18, 20).

27

1 Google does not cite any case holding that the offensiveness of data collection requires
 2 individualized inquiry into the specific types of data collected nor into any other individual issue.
 3 Instead, Google relies on decisions that Google previously cited (including in its prior class
 4 certification opposition) in which district courts found, as a matter of law, that plaintiffs'
 5 allegations did not rise to the level of highly offensive conduct. *See* Mot. at 5 (citing *McCoy v.*
 6 *Alphabet, Inc.*, 2021 WL 405816 (N.D. Cal. Feb. 2, 2021); *Hammerling v. Google LLC*, 615 F.
 7 Supp. 3d 1069 (N.D. Cal. 2022); *In re iPhone Application Litig.*, 844 F. Supp. 2d 1040 (N.D.
 8 Cal. 2012)); Dkt. 329 at 13–14 (Google certification opposition citing *Hammerling* and *iPhone*
 9 *Application*); Dkt. 381 at 20 (Google summary judgment motion citing *McCoy*). Those decisions
 10 are not new legal developments, and they do not warrant decertification. Two of those decisions
 11 are distinguishable on their facts,⁴ and the third gave no explanation for its conclusion.⁵ None
 12 of those decisions indicated that the “offensiveness” question required individualized inquiry into
 13 the type of data collected or into any other issue.

14 **3. Google’s Other Arguments Are Without Merit**

15 **a) Plaintiffs Did Not Change Their Theory of “Offensiveness”**

16 Google contends that “Plaintiffs offered a new theory of offensiveness at trial,” which
 17 Google terms the “puzzle piece” theory. Mot. at 5. Nothing about this theory was new or
 18 otherwise provides any basis for decertification.

19 Google misconstrues the purpose for which Plaintiffs used Mr. Rodriguez’s testimony.
 20 Mr. Rodriguez in his direct testimony used the phrase “puzzle piece” to describe why he believes

21 ⁴ As this Court pointed out, *Hammerling* did not involve affirmative promises not to collect
 22 certain data, while Google’s disclosures in this case affirmatively “describe data that Google will
 23 *not* save when (s)WAA is off.” Dkt. 445 (Order Denying MSJ) at 10. In *McCoy*, the court
 24 dismissed the privacy claim because the plaintiff alleged nothing more than that the defendant’s
 25 collection of the “frequency and duration of use of certain apps” was highly offensive. 2021 WL
 405816, at *8. That case, like *Hammerling*, also did not involve affirmative misrepresentations
 by the defendant. *Id.* at *7.

26 ⁵ As another court in this district observed, the offensiveness analysis in *iPhone Application* was
 27 “without explanation,” and that opinion “did not explain how” its conclusion “was consistent
 with California’s community privacy norms.” *Opperman*, 205 F. Supp. 3d at 1078.

1 (s)WAA-off data taken by Google qualifies as “personal information” according to Google’s
 2 own definition of that term in its Privacy Policy. Tr. 811:3–812:22. Google argued in its opening
 3 statement that it should not be found liable because (s)WAA-off data is not “personal.” Tr.
 4 236:15–19 (Google’s Opening: “This case is about non-personal data, data that isn’t tied to any
 5 user’s identity. It is de-identified data.”). Mr. Rodriguez responded to Google’s argument by
 6 explaining:

7 Q. Based on your involvement in this case, your work on this case,
 8 what are the types of data that Google collects when WAA or
 9 sWAA is turned off?

10 A. So it’s -- to me, the way I look at it is it’s like pieces of a puzzle,
 11 in a sense. So one piece, they have my device ID. Another piece
 12 would be the apps I downloaded, which ones I opened. Another
 13 one would be gender. Another one would be age. There’s a lot of
 14 other ones as well that kind of just, when you put it all together, it
 15 becomes -- it is me.

16 . . .

17 Q. Do you believe that information is personal?

18 A. Very personal.

19 Tr. 811:9–812:22. Mr. Rodriguez was referring to the exact same information that Google’s own
 20 Privacy Policy defines as “personal information.” In general, the Privacy Policy defines
 21 “personal information” as any data that “*can be reasonably linked*” to the user “by Google.” PX-
 22 67 at 22 (emphasis added). The Privacy Policy also gives specific examples of “personal
 23 information” which match Mr. Rodriguez’s testimony exactly: “unique identifiers tied to the
 24 browser, application, *or device* you’re using.” *Id.* at 16 (emphasis added). This definition of
 25 “personal information,” in Google’s Privacy Policy, also featured in other witnesses’
 26 examinations. *See, e.g.*, Tr. 1521:22–1522:3 (crossing Mr. Ruemmler with this definition); Tr.
 27 553:7–554:3 (Plaintiff Santiago discussing this definition).

28 Mr. Rodriguez’s testimony at trial was consistent with what Plaintiffs have argued
 29 throughout this litigation: (s)WAA-off data is “personal information,” as defined in Google’s
 30

1 Privacy Policy, because it *can* be linked to users' Google Account information. *Compare, e.g.*,
2 Dkt. 381 (Google's MSJ) at 2 (arguing that (s)WAA-off data is "non-personal information"),
3 *with* Dkt. 397-1 (Plaintiffs' Opp'n to Google's MSJ) at 3–4, 17 (relying on the Privacy Policy
4 and California law to argue that (s)WAA-off data is "personal" because it "can be reasonably
5 linked" to a user's Google Account). This Court's order denying Google's summary judgment
6 motion agreed with Plaintiffs' position and found that "a reasonable juror could view the
7 (s)WAA-off data" as "comprising a user's personal information." Dkt. 445 at 8 (citing Cal. Civ.
8 Code § 1798.140). Plaintiffs made the same argument to the jury, relying on the same classwide
9 evidence.

b) Google's Conduct Was "Highly Offensive" Regardless of Whether Google Did in Fact Use any Class Member's (s)WAA-Off Data to Identify Him or Her

12 The fact that (s)WAA-off data *could* be used to identify the user is relevant to
13 “offensiveness” because it proves that Google’s collection of this data violated Google’s Privacy
14 Policy, by collecting “personal information” according to its own definitions.

15 Plaintiffs proved (through classwide evidence) that Google was *capable* of linking class
16 members' (s)WAA-off data to class members' identities. Dr. Hochman testified: "The [(s)WAA-
17 off] data, by its nature, by being rich data, full of identifiers and full of details about the person,
18 lends itself to reidentification, and preventing reidentification is a very hard problem. And as a
19 result, my opinion is that nothing stops Google from reidentifying it." Tr. 738:25–739:4; *see*
20 *also* Tr. 600:6–601:6 (Dr. Hochman describing how Google by default collects unique device
21 identifiers tied to the "phone [] in your pocket" as well as app instance identifiers, which are "a
22 serial number that identifies your copy of the app"); Tr. 1699:1–23 (Google's technical expert
23 Dr. Black admitting that Google collects same).

24 Google cites no authority holding that, for purposes of assessing the “offensiveness” of
25 Google’s conduct, a factfinder must determine whether Google did in fact use each class
26 member’s data to actually identify them. Instead, Google relies on out-of-district decisions that
27 applied non-California law to very different facts. In *Peterson v. Aaaron’s, Inc.*, the putative

1 class's claims required individualized inquiry into "the particular circumstances of each class
2 member" such as whether the individual class member used a personal or work computer and
3 whether a certain spyware function was activated on the member's computer. 2017 WL 364094,
4 at *8–10 (N.D. Ga. Jan. 25, 2017). And in *Murray v. Financial Visions, Inc.*, the putative class's
5 claims required individualized inquiries into the contents of each class member's emails. 2008
6 WL 4850328, at *5 (D. Ariz. Nov. 7, 2008).

7 No such individual inquiries were required to find Google’s conduct highly offensive in
8 this case. Here, the jury was presented with classwide evidence of Google’s uniform
9 representations and uniform conduct, which amply proved offensiveness on a classwide basis
10 regardless of whether Google actually linked any class member’s app activity data to that class
11 member’s Google Account identifier. All class members had their (s)WAA toggle set to off, and
12 none of Google’s cases address how such a binary setting can be capable of individualized issues.
13 Plaintiffs’ proof properly focused on the common evidence, which was more than sufficient to
14 prove that Google’s conduct was highly offensive.

c) **Proving “Offensiveness” Does Not Require Individualized Proof that Each Class Member’s (s)WAA-Off Data Contained Any Particular Identifying Information**

17 Relatedly, Google argues on page 9 of its motion that the classes must be decertified
18 because Plaintiffs did not present evidence at trial that every single class member's (s)WAA-off
19 data contained the specific kinds of identifying information Mr. Rodriguez discovered in his own
20 (s)WAA-off data that Google produced in this case, namely: his name, email, and phone number.
21 Google now says that the inclusion of that data in Google's logs was "inadvertent" because "this
22 is not how the collection of (s)WAA-off data is designed to work." *Id.* In its closing argument
23 at trial, Google made the same statistical arguments that it now rehashes on pages 9 and 10 of its
24 motion. *See* Tr. 1929:2-9. Google misses the point.

25 The point of this evidence—that Mr. Rodriguez’s data contained his name, phone
26 number, and email address—is to prove uniform *failures* by Google that are common across all
27 class members. Google *uniformly* did not take steps to prevent such identifying data from being

1 collected in the first place, and Google *uniformly* did not take steps to prevent such data from
 2 being saved in its logs. *See* Tr. 688:5–11, 702:11–21 (Dr. Hochman describing how Google does
 3 not employ any “safeguard” to prevent the collection of names, phone numbers, and email
 4 addresses in (s)WAA-off data). Google’s Head of Analytics admitted on the stand that Google’s
 5 collection of Mr. Rodriguez’s name, phone number, and email address “bothers me” and “is a
 6 violation of our policy” that “shouldn’t be happening.” Tr. 1142:1–14 (Ganem). Therefore, it
 7 does not matter whether this kind of identifying information (name, email, phone number) is
 8 “rare” in (s)WAA-off data, as Google insists on page 9 of its motion. The point is that Google’s
 9 failure to take adequate steps to prevent the collection and saving by Google of names, phone
 10 numbers, and email addresses is a classwide failure that supports the jury’s finding that Google’s
 11 conduct was highly offensive.

12 As discussed above, the Court’s instruction did not require the jury to find that the classes’
 13 (s)WAA-off data contained any particular types of information. Dkt. 666 at 19, 21 (Instructions
 14 Nos. 18, 20). Google did not challenge that instruction, which is in any event fully in line with
 15 California law. *See In re Google Referrer Header Priv. Litig.*, 465 F. Supp. 3d at 1009–10
 16 (“[I]nformation need not be personally identifying to be private.”).

17 **d) App Privacy Policies Do Not Raise Individualized Issues**

18 Google next recycles another argument this Court rejected at the class certification
 19 stage—that the existence of different app privacy policies creates individualized issues. Mot. at
 20 7. According to Google, the offensiveness inquiry “requires individualized proof as to the
 21 disclosures from each third-party app that used GA4F during the class period to identify what
 22 their disclosures represented to users and then mapping those disclosures to each class member.”
 23 *Id.* at 8. Google said almost the same thing in its class certification opposition, when it claimed
 24 that “the classes received disparate, relevant disclosures from millions of apps” and that “the fact-
 25 finder will have to evaluate which of the various sources of disclosure each individual saw.” Dkt.
 26 323 at 9, 23. This Court correctly rejected that argument, reasoning that “the relevant question
 27 concerns Google’s disclosures about the sWAA button, not third-party disclosures to users. To

1 the extent Google had a policy that required third party apps to disclose *Google's* policies to
 2 users, that evidence may be applied across the class.” Dkt. 352 at 17.

3 The jury rejected this argument, too. At trial, Google argued, over and over again, that
 4 “[e]very single app that uses Google Analytics is required to tell every single one of their users
 5 about Google Analytics and how it collects and uses data.” Tr. 1941:13–15 (closing argument);
 6 *see also, e.g.*, Tr. 233:11–16 (opening). The jury was not persuaded, and Google offers no reason
 7 to set aside the jury’s classwide liability finding.

8 Google’s effort to relitigate this issue falls particularly flat because, as this Court
 9 acknowledged, Google “conceded that no third-party app disclosure to users discussed WAA or
 10 (s)WAA.” Dkt. 587 (*MIL Order*) at 6–7. So there simply *are no* app privacy policies that
 11 informed users that Google collects their data even when (s)WAA is off. Because none of these
 12 third-party app privacy policies discussed WAA or (s)WAA, there was no reason for the jury to
 13 consider them. Google’s argument on this point is especially meritless given that Google
 14 successfully moved *in limine* to limit Plaintiffs’ reliance on “evidence and argument regarding
 15 the compliance or lack thereof of third-party applications with Google’s disclosures.” Dkt. 528
 16 at 3; *see* Dkt. 587 (*MIL Order*) at 17–18. And in fact, neither party entered into evidence any
 17 individual app privacy policy.

18 This Court should reject Google’s “post-trial musings” about hypothetical differences
 19 among third-party app policies, which boil down to “rank speculation that is completely
 20 untethered to the evidence admitted at trial.” *Frasco v. Flo Health, Inc.*, 2025 WL 2680068, at
 21 *11 (N.D. Cal. Sept. 17, 2025) (denying post-trial motion to decertify class in a privacy case).
 22 Google’s failure to cite “any relevant evidence adduced at trial” further “underscores that the
 23 decertification request is in reality an improper motion for reconsideration under another name.”
 24 *Id.*

25 Nor does it matter whether a class member “was okay with Target having analytics data”
 26 or whether someone “allow[s] other SDKs to collect the same data.” Mot. at 8. That argument
 27 misconstrues Plaintiffs’ claims. Plaintiffs have not sued Target, nor some “other SDK” provider

1 like Meta. *Id.* This case is about “on” and “off” toggles that Google presented to Google account
2 holders, and about what Google (and its own CEO) told users about how those toggles controlled
3 “whether” Google collected their data. Ex. 3 (PX-45, clip report for Sundar Pichai Congressional
4 testimony) at 24:19–25:02. In this Court’s words, “the consent question in this case” turns on
5 whether it was “objectively reasonable for Plaintiffs to expect that turning WAA or (s)WAA off
6 would stop Google from collecting their data through third-party apps.” Dkt. 587 (*MIL* Order)
7 at 7. Put another way, “[t]he consent question in this case revolves around the relationship
8 between Google and Plaintiffs, not the apps and Plaintiffs nor Google and the apps.” *Id.* And if
9 Google is merely rearguing that third-party collection of class members’ data diminishes the class
10 members’ reasonable privacy expectation or somehow renders Google’s conduct less offensive,
11 the jury soundly rejected those arguments by finding that the class members in fact had a
12 reasonable privacy expectation in their (s)WAA-off data and that Google’s conduct was in fact
13 highly offensive.

e) **Common Issues Predominate for the iOS Class**

15 Google’s final argument is that individualized issues predominate for the iOS class
16 because of Apple’s App Tracking Transparency Program (“ATT”). Mot. at 10. This feature
17 causes a popup screen to appear on the user’s phone which contains the prompt: “Ask app not to
18 track.” Tr. 1295:18–1296:4 (Langner); *see* Dkt. 473-4 ¶ 103 (image of prompt pasted into Dr.
19 Black’s expert report). If the user clicked “yes” then the Apple iOS system supposedly prevented
20 the phone from *transmitting Apple’s* unique device identifier (called an IDFA) to the app or to
21 Google. Tr. 1295:25–1296:4 (Langner). Google continued to collect all other (s)WAA-off data
22 besides that *one* identifier. *See id.* (Google employee Belinda Langner describing how ATT
23 merely impacts Google’s access to the IDFA device identifier); *see also id.* at 1728:15–25;
24 1730:15–21; 1731:2–19 (Dr. Black confirming that Google would use “something else” to
25 perform “conversion tracking”). Apple’s ATT popup screen did not say anything about
26 “(s)WAA” or “Google,” let alone inform users that Google collects data from users regardless of
27 their (s)WAA status and regardless of how they respond to the prompt.

1 Google's argument about Apple's ATT was raised and rejected in the pre-trial
 2 certification order. Dkt. 352 at 16 (rejecting this argument as "not enough to defeat a finding of
 3 predominance"). In this Court's words, "this issue still warrants class treatment because device-
 4 level settings presumably apply uniformly across all iOS devices or all Android devices." *Id.* at
 5 17. Nothing in the evidence at trial provides any reason to reconsider this determination.

6 Just as the Court had predicted, the parties relied at trial on classwide evidence to show
 7 the classwide impact of Apple's ATT initiative. The ATT program (and its prompt to users)
 8 were uniform across the class. The jury appropriately found that Apple users who clicked "no"
 9 to the prompt ("Ask app not to track") are still in the class. Disclosures shown to users on third-
 10 party apps were not at issue in this case. *Supra*, § III.B.3.d (explaining why third-party app
 11 privacy policies were not relevant). The relevant point is that all class members had their *Google*
 12 setting ((s)WAA) set to "off."

13 Classwide evidence also showed the effect of Apple users clicking "yes" to the ATT
 14 prompt (i.e., asking the "app not to track"). Clicking "yes" caused every class member's device
 15 to transmit (slightly) less information to Google and to the app—specifically, these users'
 16 (s)WAA-off data no longer contained Apple's IDFA device identifier. But for purposes of this
 17 motion, that does not create an individualized issue either. Google continued to collect all of
 18 these users' *other* app activity data and to make use of it to monetize advertisements through
 19 "conversion modeling."⁶ Plaintiffs' damages expert was therefore able to include these Apple
 20 users in his damages calculations. *See* Tr. 943:17–944:14, 987:11–22 (Plaintiffs' damages expert

21
 22 ⁶ Mr. Ganem agreed that Google uses "conversion modeling" for "conversion event[s] that . . .
 23 can't [be] tie[d] directly to a device ID [by] us[ing] other things that [Google] know[s] about that
 24 device . . . to infer that it is the same" device that saw a relevant ad. Tr. 1212:9–17. Ms. Langner
 25 also conceded that Google uses "a variety of modeling techniques to try to tie those two
 26 devices"—i.e., the device that saw the ad and the device that bought the product—"even though
 27 [Google] do[esn't] have a specific identification." Tr. 1341:6–16; *see also* Tr. 1730:15–19,
 1731:2–19 (similar testimony from Google's technical expert Dr. Black, including an admission
 that Google "can use conversion modeling" for (s)WAA-off users who click "yes" to the ATT
 prompt).

1 Mike Lasinski testifying that Google continues collecting (s)WAA-off data even from users who
 2 click “yes” to the ATT prompt and that Google still tracks conversions for these users).

3 Google next contends on pages 9 and 10 of its motion that class members’ individual
 4 answers to the ATT prompts are necessary to evaluate Google’s consent defense. Not so. The
 5 ATT popup is not a Google disclosure and does not say anything about what *Google* collects or
 6 does not collect. The jury was correctly instructed to decide the consent defense from “the
 7 perspective of an objectively reasonable user reading *Google’s* disclosures.” Dkt. 666 at 22
 8 (Instruction No. 21) (emphasis added); PX-3 at 1. The class members’ individual answers to the
 9 ATT prompts on their phones are not relevant to the jury’s determination of whether those class
 10 members consented to *Google* collecting their (s)WAA-off data.

11 Furthermore, even if those answers were relevant, Google could have made that argument
 12 at trial but chose not to. Even now, Google only offers speculation that the answers to the ATT
 13 prompt “may” affect a jury’s evaluation of whether these class members consented to Google’s
 14 collection of their (s)WAA data. Mot. at 10; *see also id.* (“it may be the case that . . .”); *id.* at 11
 15 (“users may have understood . . .”). Such “[s]peculation about events or issues for which a
 16 defendant has not offered evidence [at trial] will not do.” *Flo Health*, 2025 WL 2680068, at *8
 17 (citation omitted).

18 **C. There Is No Basis to Decertify the Rule 23(b)(2) Classes**

19 Google presents no separate argument regarding certification of the injunctive classes
 20 under Rule 23(b)(2). Google’s only Rule 23(b)(2) argument is a meritless assertion that there
 21 are “no common issues” and that trial somehow “confirmed there are no common questions that
 22 can be resolved by class-wide proof.” Mot. at 4. As explained above, this is incorrect. Google
 23 has not addressed the other requirements for Rule 23(b)(2) certification, which means Google
 24 has waived any challenge to those requirements. Google identifies no change in either the law
 25 or facts that would warrant decertification of the Rule 23(b)(2) classes.

26 The evidence at trial confirmed the appropriateness and importance of the Court’s Rule
 27 23(b)(2) certification. Rule 23(b)(2) “ordinarily will be satisfied when plaintiffs have described

1 the general contours of an injunction that would provide relief to the whole class.” *Parsons v.*
 2 *Ryan*, 754 F.3d 657, 689 n.35 (9th Cir. 2014). This Court already held that Plaintiffs did just
 3 that: at class certification, Plaintiffs “convincingly identified the ‘general contours’ of the class-
 4 wide injunctive relief they seek.” Dkt. 352 at 19. Based on the common proof presented at trial,
 5 and consistent with the jury’s liability findings, Plaintiffs now seek the same relief they identified
 6 at class certification. Dkt. 700 (Plaintiffs’ motion for permanent injunction) at 9.⁷

7 Google’s lone case supports Plaintiffs’ position: *Small v. Allianz Life Ins. Co. of N. Am.*,
 8 122 F.4th 1182, 1201 (9th Cir. 2024). According to the Ninth Circuit, when class members seek
 9 “uniform” relief from “practices that are generally applicable to the class as a whole,” Rule
 10 23(b)(2) certification is “unquestionably” appropriate. *Id.* (internal quotation marks and citation
 11 omitted). Here, Plaintiffs for all class members seek uniform relief from Google’s generally
 12 applicable practice of collecting, saving, and exploiting class members’ (s)WAA-off app activity
 13 without consent. This is precisely where Rule 23(b)(2) is most applicable.

14 Injunctive relief for all class members is especially important in this case. Google’s own
 15 employees recognize that they “are not taking [their] responsibility as a steward of user data
 16 seriously” (PX-6 at 63) and that they “really resist the idea that anyone can tell us what to do”
 17 (PX-6 at 50). Indeed, Google continues to engage in its highly offensive conduct. Dkt. 700
 18 (Plaintiffs’ motion for permanent injunction) at 10–11.

19 **D. There Is No Basis to Vacate the Jury’s Verdict**

20 Finally, because decertification is unwarranted, the Court should reject Google’s request
 21 to vacate the jury’s verdict. Mot. at 11. Further, there is no reason to vacate the jury’s verdict as
 22 to the two named plaintiffs. Google complains that the class trial enabled Plaintiffs to admit
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25 ⁷ The proposed injunction has four parts: (1) enjoin Google from collecting and saving (s)WAA-
 26 off data; (2) require Google to delete the (s)WAA-off data it has collected; (3) require Google to
 27 destroy the algorithms, models, and services created or modified using (s)WAA-off data; and
 (4) appoint an independent third-party to monitor and ensure Google’s compliance.

1 evidence of “marginal relevance” to the individual class representatives, but Google nowhere
 2 identifies the specific evidence it is referencing. *Id.*

3 **IV. CONCLUSION**

4 Google had its chance at trial, and in substance made the arguments to the jury that
 5 Google advances here. The jury found these arguments unpersuasive, and issued a verdict for
 6 Plaintiffs, finding that Google harmed all of the class members and invaded their privacy. Google
 7 has proffered nothing to show why the jury’s findings should be disregarded and overturned,
 8 especially by way of an improper decertification motion. Google’s motion should be denied.

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